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SUBJECT: SUPREME COURT REFORM CLEARS CONGRESS

1. Summary: On May 18, Congress approved most of the President's partial veto to the reform governing the make-up of the Supreme Court, overriding only the provision which would have reduced the number of judges. Despite lingering differences, Congressional approval clears the court reform to move into its implementation phase, expected to take at least three months. In the meantime, Ecuador lacks a high court, constraining the administration of justice. End Summary.

Gutierrez' Party Votes With Majority on Override -----

2. Former President Gutierrez' PSP party gave the majority parties that ousted Gutierrez the votes needed to maintain a 31-magistrate Supreme Court. The parties that voted in favor of overriding the President's partial veto were the PSC, ID, Pachakutik, PSP, PSE, DP, and MPD parties and independents. There was one vote against the override by Carlos Gonzalez (ID). The PRIAN and PRE parties abstained from the vote, saying they did not want to be a part of the continued politicization of the court.

3. Ex-President Gutierrez had been in favor of shrinking the court to 16 magistrates. Gilmar Gutierrez, PSP Congressman and brother of the ex-President, told press the PSP was seeking alliances with all sectors to move the country forward. Others accused the PSP of trying to win the majority's goodwill to avoid the next round of politically-motivated Congressional purges.

Judicial Vacuum To Last Three Months -----

4. The Supreme Court will remain vacant until the new magistrates are named which will take approximately 90 days. The presidential veto struck down the creation of a seven person interim court, composed of the seven oldest judges from the superior courts, to handle urgent cases while the new court is being named. The court will have 10 chambers with three magistrates each: three criminal courts, three civil and commercial, two labor and social courts, one for administrative disputes, and one tax court.

New Requirements for Magistrates -----

5. The Supreme Court will have 31 magistrates, one of whom will be elected the court's president for a period of two years. Eleven will be career judges, ten will be from universities, and ten will be from the private sector. The requirements to be a magistrate will include: holding a law degree received at least three years prior, not having been a political party or movement leader during the past five years, not being in debt to the State, not having a contract with the State, and not having defended someone found guilty of drug charges. (This last provision has been opposed by legal scholars.)

Committees to Designate New Magistrates -----

6. The committee that will designate the new magistrates will have five members: one member from the lawyers colleges, one representing the deans of law schools, one from the ministers of the superior courts and district tribunals, one from the national anti-corruption commission, and one named by human rights organizations. After 15 days, the committee will prepare a decree to define the process for selecting among nominated candidates.

Critics Already Emerging -----

7. Human rights groups led by Valeria Merino of the group CLD have said they will not be a part of the committee to elect the new magistrates to the Supreme Court. Human rights groups do not like the power the committee would have to select candidates, eliminate candidates arbitrarily, and want greater transparency built into the process. Some human rights groups are threatening to send a complaint to the OAS stating their disagreement with Congress' decision.

Government Disagrees With Congress' Decision -----

18. Not happy with Congress' vote to maintain the 31 Supreme Court magistrates, Presidential legal advisor Roberto Gonzalez is reportedly considering drafting a new reform package to be submitted to Congress. The reforms would reportedly include changes to the selection committee and to the role of international observers, to increase civil society and media participation in the process and ensure transparency. The package could also seek to reduce the number of magistrates on the court. Commenting on another key political issue related to the court reform already approved by Congress, Gonzalez said that the validity of the rulings made by the December 8 court, including dropping charges against ex-Presidents and Vice President Bucaram, Noboa, and Dahik, would be decided by the new court.

International Organizations To Observe Process

19. According to the court reform passed by Congress, the selection process for the new court will be observed by international organizations including the United Nations, the European Union, and the Andean Community. They will act with total freedom to follow the process to qualify and designate the magistrates. They will be free to denounce any outside interference in the process.

Comment

110. Congressional passage of Supreme Court legislation shifts debate from design to implementation, which promises to be no less controversial. Until a new court is selected and sworn in, Ecuadorian justice will remain headless, preventing definitive rulings on appeals in the interim. Chacon